HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 3119 of 2001 (M/S)
(Old No. 31437/2000)

Gaurav Rastogi

vs

Addl. District Judge U.S. Nagar
and others

Approved for reporting

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~~Not Approved for Reporting~~

Date of decision 30.9.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 3119 (MS) Of 2001
(Old No. 31437/2000)

Gaurav Rastogi,
S/o Late Virender Kumar Rastogi
Resident of Mohalla Dhalsa Kashi,
District Udham Singh Nagar. ... Petitioner.

Versus

Additional District Judge,
Kashipur District
Udham Singh Nagar and others. ...Respondents.

Hon'ble Rajesh Tandon J.

Heard Sri B.C. Pandey, Sr. Advocate assisted by Sri B.D. Pandey, counsel for the petitioner and Sri Manoj Tiwari, counsel for the respondents.

By the present writ petition, the petitioner has prayed for issue of a writ, order or direction in the nature of certiorari quashing the order dated 08.07.1999 and 12.07.1999 passed by respondent No.1 and 2.

Briefly stated the petition under Section 21 of the U.P. Act No. 13 of 1972 was filed for the release of the shop situated at premises no. 236 Mohalla Khalsa Street on the ground of bonafide requirement.

A perusal of the aforesaid application under section 21 (1) (a) shows that late Sri Virender Kumar Rastogi was the original tenant of the premises in dispute. The application was filed against Sri Parvin Kumar Rastogi. A written statement was filed

by Sri Pravin Kumar Rastogi in which he has stated that the application is bad for non-impleadment of necessary parties. Annexure 2 paragraph 1 of the written statement is quoted below:-

"यह कि प्रार्थी एक किता इमसरत वाके मोहल्ला खालसा काशीपुर जिला उधमसिंह नगर का मासिक एंव लैण्डकोर्स रोड है तथा विपक्षी श्री प्रवीण कुमार के पिता स्वर्गीय वीरेन्द्र कुमार इस इमारत की पहली मंजिल पर स्थित दुकान पर लगभग तीस वर्ष पूर्व से किरायेदार माह दर माह किराया वशरह तिहत्तर रूपये प्रतिमाह से थे जिनका स्वर्गवास करीब दस वर्ष पूर्व हो चुका है ओर तबसे इस पर विपक्षी प्रवीन कुमार किरायेदार की पुराने किराये तिहत्तर रूपया प्रतिमाह से चले आते है और प्रार्थी को किराया भी अदा किया है।"

During the pendency of the case Sh. Gaurav Rastogi has filed an application stating that he is one of the heir and he sought the permission of the Court for his impleadment. He has stated that premises being non-residential, his father was the tenant. He has submitted that his interest may be safeguarded impleadment him as one of the party.

Respondents have filed the objections, however, the application was rejected on 08.07.1999 by the Prescribed Authority. The petitioner has preferred a revision before the District Judge who by his order dated 12.07.2002 dismissed the revision and hence the writ petition has been filed.

A perusal of the order passed by the Prescribed Authority shows that Prescribed Authority has not rejected the application on the ground of malafides. The Revisional Court has recorded a finding that the petitioner is unmarried and since the Written Statement was filed by the original tenant after one year and

therefore, in order to delay the present proceedings present application has been filed.

In the present case since from the very beginning the tenant has stated that apart from his there are other heirs who are necessary parties. Sri Gaurav Rastogi one of the sons of Virender Kumar Rastogi has filed an application for his impleadment, therefore, there is no occasion not to permit the petitioner to be impleadment as one of the parties.

There is no quarrel with the proposition that after the death of the original tenant all the heirs succeed the non-residential premises.

Section 3(a) provides that in the case of the residential building the heirs, who normally resided, but in the case of a non residential building all the heirs succeed. Section 3-(1) (a) (1) and (2) provides as under:-

" In this Act, unless the context otherwise requires-

(a) "tenant", in relation to a building, means a person by whom its rent is payable, and on the tenant's death-

(1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death.

(2) In the case of a non-residential building his heirs.

Since there is no dispute that Sri Virender Kumar Rastogi as the original tenant. The application under Section 21 (1) (a) is still pending therefore, there is no occasion not to implead

the petitioner when the proceedings are still pending before the Prescribed Authority.

The impleadment of the petitioner will also facilitate the authorities, while taking into consideration the hardship of the parties as provided under the proviso of Section 21(1) (a) pf I.P. Act No. 13 of 1972.

In Sudha Gupta and others VS. Prescribed Authority/ Judge Small Cause Court, Meerut and others 2000 (39) Page 819 ALR, the Allahabad High Court has held as under:-

"The question as to whether the petitioners will have any interest in the shop is to be decided by the Prescribed Authority while deciding the comparative hardship of the parties. It is true that the petitioner had filed application at a belated stage".

"In order to avoid any legal complication it would be appropriate that the petitioners would be impleaded as parties. They will file written statement within two weeks from today. The Prescribed Authority shall decide the application within three months. The case shall not normally be adjourned, if it is adjourned, not for more than three days."

"The landlord can also implead the remaining heirs of the deceased Ram Prakash."

Similar view has been taken in Mohammad Rafiq Rajbi Vs. Prescribed Authority/ Additional Civil Judge and others 2000 (38) ALR Page 81 where it has been held:-

"Section 151 in the Code of Civil Procedure is aimed to prevent fraud, oppression and abuse of the process of a Court

or miscarriage of justice. The object to law is to meet justice. The underlying object in incorporate 151 of Code of Civil Procedure is to shorten the litigation, to avoid protraction of proceedings and miscarriage/ abortion of justice. It cannot be disputed that there can be addition of parties against the wishes of plaintiff is one is to be impleaded being necessary or proper party. This is underlined principle under Order 1 Rule 10 of Code of Civil Procedure as well. Before a person is impleaded, the only condition precedent is that he must be directly and legally interested in the action. Once such person is impleaded, he shall be bound by the result of the action and the question required to be settled in the action which could be effectually and completely settled unless he is a party. In other words, the action and the answer to the same, if affects or prejudices legal rights of a person he must be allowed to join the proceedings."

" It is held that 'authority' or a Court has inherent power to entertain application of a stranger to be made a party in appropriate case where is considers that without the exercise of such powers, the ends of justice would be frustrated."

" In following judgments it is held that in exercise of inherent powers under Section 151 of Code of Civil Procedure a Court can allow impleadment of a party in the ends of justice:

(1) Dwarka Prasad Vs. Kishan Lal AIR 1986 174 (177)

(2) AIR 1954 Alld. 11(12) Para 7 and 8 (D.B.).

(3) AIR 1958 SC 394 (398)

(4) A.R. Antulay Vs. R.S. Nayak 1997 ARC 348.

In view of the aforesaid, both the parties are directed to appear before the Prescribed Authority 26th October 2004 or immediately after the receipt of the certified copy of the order. The Prescribed Authority shall allow time to file Written Statement if any and shall fix the date for hearing of the case itself and shall dispose of the entire matter by 30th January 2005.

Subject to aforesaid observation, writ petition is allowed.

30.09.2004 (RAJESH TANDON J.)

Rathour